

REMARKS

In the August 9, 2005 Office Action, claims 1-4 were rejected under 35 USC § 103(a) as being unpatentable over alleged Prior Art Admitted by Applicant (PAAA). No other references were cited or relied upon in the rejections by the Examiner. The rejections are traversed below.

Claim 1 as amended recites in part:

a medium reading unit which reads individual operator setting information stored in a recording medium, the individual operator setting information ... depend on personal features of operators engaged; a setting unit which sets an operation standard on the basis of the individual operator setting information corresponding to a specific operator before an operation; a controlling unit which operates the apparatus in the state corresponding to the personal features

(claim 1, lines 3-4 and 9-14). In other words individual operator setting information is pre-stored before a reading operation and the reading operation is controlled to operate in accordance with the personal characteristics of the manner of operation by a given individual operator performing the reading operation with the reading apparatus. Although claim 1 is not so restricted, the characteristics of the manner of operation by the individual operator include operator features such as rhythm, habitual manner and preference as described in the specification at least in paragraphs [00189], [00188], [0073], [0049], [0048], [0047], [0046], [0045], [0044], and [0042].

In contrast, what was cited in the Office Action describes a reading operation where operational characteristics "are set by default as setting information ... regardless of the individual operator setting information or personal features" (Office Action, item 4, page 2, lines 21-24); and "setting ... [an] operation standard on the basis of the default operator setting information ... by the person in charge of the manufacture of the bar code reader" (Office Action, page 3, lines 3-7). Thus, what was cited in the Office Action, teaches away from Applicant's invention. Nothing was cited or found that shows or suggests each limitation of claim 1. And nothing was cited or found that would suggest modifying Applicant's own disclosure so as to render Applicant's invention obvious. In other words, the Office Action relied on impermissible hindsight by using Applicant's disclosure as a guide to reach a conclusion that Applicant's invention would have been obvious.

Furthermore, amended claim 1 recites in part:

a medium reading unit which reads individual operator setting information stored in a recording medium, the individual operator setting information including ... frequent-beam information representing a most frequently used beam of a plurality of beams, wherein ... the frequent-beam information depend on personal features of operators engaged in the reading operation ... and a frequent beam

specifying unit which specifies the most frequently used beam of the plurality of beams owing to the personal features of the operator in the operation for reading the code

(claim 1, lines 3-4, 9-10 and 19-21). In other words, pre-stored individual reading operator setting information includes information about frequent-beam information which depends on personal characteristics of the manner of operation by a given individual operator performing the reading operation with the reading apparatus; furthermore, a beam most frequently used by the individual operator is identified based on the personal characteristics of the individual operator, where the personal characteristics of the manner of operation by a given individual operator performing the reading operation with the reading apparatus include operator features such as rhythm, habitual manner and preference as described in the specification at least in paragraphs [00189], [00188], [0073], [0049], [0048], [0047], [0046], [0045], [0044], and [0042].

In contrast, what was cited in the Office Action was an admission that the alleged Prior Art Admitted by Applicant (PAAA) "fails to teach that the default setting of emitting beams that are most optimally used by the operator is the most frequently used beam of the plurality of beams owing to the personal features of the operator in the operation for reading the code" (Office Action, page 3, lines 11-13); then, the Office Action cites page 4 of Applicant's specification as a basis for reaching a conclusion of obviousness. First of all, the Office Action admission refers to supposed claim limitations; however, no such limitations are found in Applicant's claims or suggested in Applicant's disclosure, i.e., Applicant's invention does not recite "default setting of emitting beams that are most optimally used by the operator is the most frequently used beam of the plurality of beams owing to the personal features of the operator" (Office Action, page 3, lines 14-18). Furthermore, the Office Action based the conclusion of obviousness on "[conforming] to the default operation of the scanner" (Office Action, page 4, lines 1-2). Thus, the Office Action relied on impermissible hindsight by using Applicant's disclosure as a guide to reach a conclusion that Applicant's invention would have been obvious, and then based the conclusion on a rationale that teaches away from Applicant's invention. For at least these reasons, claim 1 is in condition for allowance.

Dependent claims 2 and 3 further define claim 1 from which they depend and distinguish over the alleged PAAA for at least the reasons discussed in regard to claim 1.

Independent claim 4 recites individual operator setting information and personal features of operators limitations in a manner similar to claim 1; therefore, claim 4 is allowable for at least the reasons discussed in regard to claim 1.

Furthermore, because there were no references relied upon and because the Office Action reached the conclusion of obviousness in part based on the Examiner's assertions which could be implied as being based on common knowledge, Official Notice or the Examiner's own personal knowledge, and based on the errors pointed out above in the Examiner's Office Action, Applicant's respectfully demand that Authority in the form of references and/or an Examiner Affidavit for the conclusion of obviousness be produced in the next Office Action.

NEW CLAIMS

Newly added independent claim 5 further defines the invention and recites "individual operator setting data depend on personal characteristics" and "a frequent beam specifying unit which specifies the most frequently used beam of the plurality of beams owing to the personal characteristics" limitations in a manner similar to claim 1 and which are clearly not taught or suggested by alleged Prior Art Admitted by Applicant (PAAA). Thus, claim 5 distinguishes over the alleged PAAA for at least the reasons discussed in regard to claim 1.

Newly added dependent claim 6 depends from claim 5 and further defines the individual operator personal characteristics by reciting the limitation "the personal characteristics of the manner of operation by the operator include rhythm, habitual manner and preference" (claim 6, line 2) and which is clearly not taught or suggested in the alleged PAAA.

CONCLUSION

In accordance with the foregoing, claims 1, 2 and 4 have been amended. Claims 5 and 6 have been added. Thus, claims 1-6 are pending and under consideration.

It is submitted that the alleged Prior Art Admitted by the Applicant and/or Examiner assertions of obviousness taken individually, modified or in combination do not teach or suggest the features of the present claimed invention and for all of the reasons presented above, the August 9, 2005 Office Action fails to establish a case of *prima facie* obviousness.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

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If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 9, 2005
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